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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 In re:

11 EUGENIA ALOICE ALLEN-
12 VRABLIK,

Debtor.

13 DAVID VRABLIK, et al.,

14 Appellants,

15 v.

16 HSBC BANK,

17 Appellee.
18

CASE NO. C12-0185JLR

Bankruptcy No. 10-1100-TWD

ORDER

19 This matter comes before the court on Plaintiffs/Appellants David Vrablik and
20 Eugenia Allen-Vrablik's (the "Vrabliks") motion for leave to appeal the bankruptcy
21 court's order granting summary judgment to Defendant/Appellee HSBC Bank ("HSBC").
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1 (Vrablik Mot. (Dkt. # 1).) Having reviewed the motion, the relevant law, and the balance
2 of the record, the court DENIES the Vrabliks' motion WITHOUT PREJUDICE.

3 **I. BACKGROUND**

4 This appeal arises out of an adversarial proceeding filed by the Vrabliks in
5 bankruptcy court concerning the priority and validity of certain liens on the property (the
6 "Property") where the Vrabliks reside. (*See Vrablik v. Pate, et al.*, No. 10-1100-TWD
7 (Bankr. W.D. Wash. 2010), Adversary Proceeding (Dkt. # 1).) On October 24, 2011,
8 HSBC Bank, a defendant in the adversarial proceeding, moved for summary judgment,
9 seeking, *inter alia*, a finding from the bankruptcy court that its lien on the Property was
10 valid and superior to any interest of the Vrabliks. (*See id.* (Dkt. # 65).) On December 21,
11 2011, the bankruptcy court heard oral argument on HSBC's motion for summary
12 judgment, and orally granted the motion. (*See generally id.*) The bankruptcy court
13 issued its written order ("Order") granting HSBC's motion on January 3, 2012. (*See id.*
14 (Dkt. # 100).) On January 13, 2012, the Vrabliks filed a notice of appeal to the district
15 court with respect to the Order. (*See id.* (Dkt. # 102).)

16 **II. ANALYSIS**

17 District courts have jurisdiction to hear appeals (1) from final judgments, orders,
18 and decrees in bankruptcy proceedings; (2) from interlocutory orders issued under 11
19 U.S.C. § 1121(d); and, (3) with leave of the court, from other interlocutory orders and
20 decrees entered by a bankruptcy judge. 28 U.S.C. § 158(a). As a threshold matter,
21 although not styled as such, the court finds that the Order is an interlocutory order
22 governed by 28 U.S.C. § 158(a)(3). A bankruptcy adversary proceeding is akin to an

1 ordinary federal civil action. *See In re Belli*, 268 BR 851, 854-55 (B.A.P. 9th Cir. 2001).
2 As a result, “finality for purposes of jurisdiction over ‘as of right’ appeals under 28
3 U.S.C. § 158(a)(1) in adversary proceedings does not differ from finality in ordinary
4 federal civil actions under 28 U.S.C. § 1291.” *Id.* at 855. Here, although the Order
5 grants HSBC’s motion for summary judgment, other issues and parties remain in the
6 adversarial proceeding. (*See generally Vrablik v. Pate, et al.*, No. 10-1100-TWD,
7 Adversary Proceeding.) Indeed, in the adversarial proceeding, Defendant OneWest
8 Bank, FSB, has a pending motion for summary judgment (*id.* (Dkt. # 110)), and the
9 Vrabliks have pending claims against Defendant Raymond Sandoval (*id.* (Dkt. # 1)).
10 Had the Order been entered in an ordinary federal civil case, it would not be considered a
11 final order, and would not be appealable absent certification from the district court.
12 Accordingly, the court treats the Vrabliks’ motion as a motion for leave to appeal an
13 interlocutory order of the bankruptcy court.

14 While district courts must hear appeals from final decisions, they have
15 discretionary authority to hear interlocutory appeals. *In re City of Desert Hot Springs*,
16 339 F.3d 782, 787 (9th Cir. 2003). In considering motions for leave to appeal a
17 bankruptcy court’s interlocutory order pursuant to 28 U.S.C. § 158(a)(3), district courts
18 look to the standards set forth in 28 U.S.C. § 1292, which governs interlocutory appeals
19 from the district courts to the circuit courts. *See Belli v. Temkin (In re Belli)*, 268 B.R.
20 851, 858 (B.A.P. 9th Cir. 2001). Section 1292 permits interlocutory appeals where the
21 order “involves a controlling question of law as to which there is substantial ground for
22 difference of opinion and . . . an immediate appeal from the order may materially advance

1 the ultimate termination of the litigation [.]” 28 U.S.C. § 1292(b). Generally, courts
2 disfavor interlocutory appeals and only grant leave to appeal where three factors are met.
3 *In re NSB Film Corp.*, 167 B.R. 176, 180 (B.A.P. 9th Cir. 1994); *In re Burke*, 95 B.R.
4 916, 917 (B.A.P. 9th Cir. 1989); *In re 450 S. Burlington Partners LLC*, No. CV 09-4097
5 PSG, 2009 WL 2460880, at *5 (C.D. Cal. 2009). Indeed, another district court has
6 stated:

7 Because an interlocutory appeal represents a deviation from the basic
8 judicial policy of deferring review until the entry of a final judgment, the
9 party seeking leave to appeal an interlocutory order must also demonstrate
10 that exceptional circumstances exist.

11 *In re Philadelphia Newspapers, LLC*, 418 B.R. 548, 557 (E.D. Pa. 2009); *see also In re*
12 *Wyss*, 2008 WL 3850386, at at *1 (W.D. Wis. 2008) (“[U]nless exceptional
13 circumstances are present appeals must await final order at which point all issues can be
14 resolved at once. In other words, it must be clear than an interlocutory appeal will
15 materially improve efficiency.”).

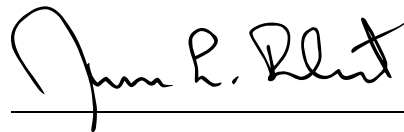
16 The Vrabliks’ do not address this aforementioned law in their motion for leave to
17 appeal; and accordingly, the Vrabliks have not met their burden to show that the Order
18 meets the § 1292(b) test. (*See generally* Vrablik Mot.) The Vrabliks’ motion provides
19 factual background for their affirmative claims in the adversarial proceeding, argues that
20 their appeal is meritorious, and states support for their positions on the issues they wish to
21 appeal. (*See generally* Vrablik Mot.) None of this information is pertinent to the legal
22 framework under which this court analyzes a motion for leave to file an interlocutory
23 appeal. The Vrabliks provide no indication that an interlocutory appeal of the Order will

1 advance the litigation such that the district court should hear the appeal now as opposed
2 to at the end of the adversarial proceeding. Additionally, while the Vrabliks state that
3 they may lose their house if the court does not grant them leave to file an interlocutory
4 appeal (Vrablik Mot. at 2), they do not provide the court with a status of any pending
5 foreclosure on the Property demonstrating that exceptional circumstances exist.
6 Accordingly, the court denies the Vrabliks' motion for leave to appeal the interlocutory
7 order of the bankruptcy court.

8 **III. CONCLUSION**

9 For the foregoing reasons, the court DENIES the Vrabliks' motion for leave to
10 appeal (Dkt. # 1) WITHOUT PREJUDICE.

11 Dated this 27th day of February, 2012.

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14 The Honorable James L. Robart
15 U.S. District Court Judge
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